

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-1002

United States of America,

Appellee,

v.

Benjamin Vibanco-Sanchez,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: February 21, 2001
Filed: February 28, 2001

Before LOKEN, FAGG, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Benjamin Vibanco-Sanchez pleaded guilty to a drug conspiracy charge, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and to criminal forfeiture. The district court¹ sentenced him to 151 months imprisonment and 5 years supervised release. On appeal, Vibanco-Sanchez's counsel has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), raising only the issue whether the district court erred in granting

¹The HONORABLE JOSEPH F. BATAILLON, United States District Judge for the District of Nebraska.

Vibanco-Sanchez a 2-level rather than 3-level acceptance-of-responsibility reduction. Vibanco-Sanchez has not filed a pro se supplemental brief.

Vibanco-Sanchez stipulated at sentencing to a total offense level of 34, see United States v. Nguyen, 46 F.3d 781, 783 (8th Cir. 1995); and in any event, the district court did not clearly err in denying the additional 1-level reduction, see United States v. Holt, 149 F.3d 760, 762 (8th Cir. 1998) (standard of review), despite the government's plea-agreement stipulation indicating that Vibanco-Sanchez had timely notified authorities of his intent to plead guilty, see U.S.S.G. §§ 3E1.1(b), 6B1.4(d), p.s.; United States v. Nunley, 873 F.2d 182, 187 (8th Cir. 1989) (plea-agreement stipulation that defendant timely accepted responsibility does not bind sentencing court).

Having found no non-frivolous issues upon our review of the record, see Penson v. Ohio, 488 U.S. 75 (1988), we now affirm and grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.